



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 20 2018

Stephen J. Kaufman, Esq.
Kaufman Legal Group
777 S. Figueroa Street, Suite 4050
Los Angeles, CA 90017

RE: MUR 7131
Senior Votes Count and
Tony Fazio in his official
capacity as treasurer

Dear Mr. Kaufman:

On September 1, 2016, the Federal Election Commission notified your clients, Senior Votes Count and Tony Fazio in his official capacity as treasurer ("SVC"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 20, 2016, the Commission notified your clients of a supplemental complaint in this matter. Copies of the complaint and the supplemental complaint were provided to your clients at that time.

On March 6, 2018, the Commission, on the basis of the information in the complaint and supplemental complaint, and information provided by SVC, dismissed the allegations that SVC violated 52 U.S.C. § 30104(b) and (g) by failing to timely file a 24-Hour Independent Expenditure Report, failing to disclose independent expenditures on its 2014 Post-General Report, and by failing to report accurate employer information for a contributor. The Commission cautions SVC regarding the reporting of independent expenditures and accurate employer information for contributors. The Commission also dismissed the allegation that SVC violated 52 U.S.C. §§ 30118(a) and 30104(b) by accepting and not reporting prohibited contributions in the form of debts not paid. Further, the Commission found no reason to believe that SVC violated 52 U.S.C. § 30104(b) by failing to report in-kind contributions or 52 U.S.C. § 30116(a) by making excessive contributions in connection with alleged coordinated radio advertisements. Finally, the Commission found no reason to believe that SVC violated 52 U.S.C. § 30118(a) by receiving credits from a vendor based on billing errors. Accordingly, the Commission closed its file in this matter.

Documents related to this case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters. 81 Fed. Reg. 50,702 (August 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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Sincerely,

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Senior Votes Count and Tony Fazio
In his official capacity as treasurer

MUR 7131

I. INTRODUCTION

The Complainant alleges that Senior Votes Count ("SVC"), a non-connected committee, coordinated with Representative Carol Shea-Porter and Carol Shea-Porter for Congress ("Committee") and Susan D. Mayer, a Shea-Porter congressional staffer, regarding a \$3,110 contribution that Mayer made to SVC, which was purportedly used to make undisclosed independent expenditures supporting Shea-Porter shortly before the 2014 general election. The Complainant also alleges that SVC failed to disclose Mayer's occupation. In addition, the Complaint alleges that SVC received an in-kind contribution from Kaufman Legal Group in the form of forgiving debts for legal fees. The Complainant also alleges that the National Committee to Preserve Social Security and Medicare PAC coordinated its actions with SVC to support Shea-Porter. Finally, a supplement to the Complaint alleges that NGP VAN, Inc., credited services to SVC, resulting in in-kind contributions.

For the reasons below, the Commission finds no reason to believe as to the coordination allegations, dismisses with caution the allegation that SVC failed to file a 24-Hour Report and failed to report the independent expenditure on its next regularly scheduled disclosure report. The Commission also dismisses with caution the allegation as to SVC regarding the reporting of Mayer's occupation and employer. Further, the Commission dismisses the allegation that SVC accepted prohibited contributions from Kaufman Legal Group in the form of uncollected debts.

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Finally, the Commission finds that there is no reason to believe that SVC accepted prohibited contributions from NGP Van by crediting the vendor's billing errors.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Shea-Porter was a candidate for reelection in the First Congressional District of New Hampshire in 2014,¹ and Carol Shea-Porter for Congress is her principal campaign committee. During the 2014 election cycle, Susan Mayer was a part-time staffer in Shea-Porter's congressional district office in New Hampshire and volunteered part-time on her re-election campaign.² SVC is a non-connected committee that disclosed the receipt of a \$3,110 contribution from Mayer on October 29, 2014, which was transmitted to SVC through ActBlue.³ SVC disclosed Mayer's occupation and employer as "Not-Employed" and "N/A," respectively.⁴ ActBlue, however, disclosed Mayer's occupation and employer as "Congressional Staffer" and "U.S. House of Representatives," respectively.⁵ Also on October 29, 2014, SVC paid \$3,000 for two radio advertisements on behalf of Shea-Porter, according to an untimely 24-Hour Report of independent expenditures SVC filed on December 2, 2014. SVC did not disclose the independent expenditures on its 2014 Post-General Report. On January 5, 2015, the Commission's Reports Analysis Division sent SVC a Request for Additional Information

¹ Representative Shea-Porter lost her reelection bid on November 4, 2014. She ran again in 2016 for the same Congressional seat and was elected on November 8, 2016.

² See <http://congressional-staff.insidegov.com>.

³ SVC Resp. at 1; SVC 2014 Post-General Election Report at 6 (Dec. 4, 2014). ActBlue is a non-connected committee that acts as an intermediary for individual contributions made on its website to Democratic candidates and to political committees.

⁴ SVC 2014 Post-General Election Report at 6.

⁵ ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

concerning the untimely 24-Hour Report and SVC's failure to disclose the expenditures on its 2014 Post-General Report. SVC responded that it filed a 24-Hour Report as soon as it realized one had not been filed.⁶ SVC has not amended its 2014 Post-General Report to disclose the independent expenditures.

SVC first disclosed debts to Kaufman Legal Group ("Kaufman") on its 2014 July Quarterly Report and has continuously reported debts to Kaufman on subsequent reports, including the most recent, its 2016 Year-End Report.⁷ Kaufman is a law firm that specializes in campaign finance, election law, and governmental ethics, and it has a political compliance department.⁸ SVC made two payments totaling \$2,237 to Kaufman in late 2014, which was the amount of debt to Kaufman disclosed on its 2014 July Quarterly Report, but those payments still left a balance due to Kaufman of \$4,174.52. Since then, SVC has continued to accrue debts to Kaufman, and has not reported any additional payments to Kaufman.

B. Legal Analysis

1. Coordination

Under the Act, an expenditure made by any person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his or her authorized political committees, or

⁶ SVC Miscellaneous Report to the Commission (Feb. 9, 2015). SVC filed its Post-General Report on December 4, 2014, two days after it reported the independent expenditure.

⁷ On its 2014 July Report, SVC reported a total of \$2,237 in debts owed to Kaufman for "legal and treasury fees" or for "legal and treasury expenses." See SVC 2014 July Quarterly Report at 7. On its 2016 Year-End Report, SVC reported a total of \$10,102 in debts owed to SVC, primarily for legal and treasury fees or legal and treasury expenses. See SVC 2016 Year-End Report at 6-18.

⁸ See <http://www.kaufmanlegalgroup.com>. Kaufman is also representing SVC in this matter.

their agents, is considered a contribution to such candidate.⁹ Communications that are paid for by a third party, but coordinated with a candidate, are also in-kind contributions to the candidate.¹⁰ Under Commission regulations, a communication is coordinated if it: (1) is paid for a third party; (2) satisfies one of five content standards set forth at 11 C.F.R. § 109.21(c);¹¹ and (3) satisfies one of six conduct standards set forth at 11 C.F.R. § 109.21(d).¹²

Complainant alleges that Shea-Porter and the Committee coordinated with Mayer and SVC regarding Mayer's contribution that she earmarked for the Committee, resulting in an excessive contribution to the Committee.¹³ As evidence, the Complaint alleges that Mayer and SVC representatives appeared at a Shea-Porter campaign event, and that there are professional relationships among SVC representatives, Mayer, and Shea-Porter.¹⁴

SVC asserts that there is no evidence of coordination.¹⁵ The available information does not indicate that Mayer contributed to SVC specifically to fund radio ads on behalf of the Committee.

⁹ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a). The Act prohibits a candidate or political committee from knowingly accepting contributions in violation of the contribution limits set forth in the Act. 52 U.S.C. § 30116(f).

¹⁰ 11 C.F.R. § 109.20.

¹¹ The content standards are a communication that is an electioneering communication; a public communication that disseminates, distributes, or republishes, in whole or in part, campaign material prepared by a candidate or the candidate's authorized committee; a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office; a public communication referring to various types of federal candidates or to political parties that satisfies the requirements of 11 C.F.R. §§ 109.21(c)(4)(i), (ii), (iii) or (iv); and a public communication that is the functional equivalent of express advocacy. See 11 C.F.R. § 109.21(c).

¹² The conduct standards listed in 11 C.F.R. § 109.21(d) are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication.

¹³ Compl. at 1.

¹⁴ *Id.* at 8, 10.

¹⁵ SVC Resp. at 2.

Mayer made a contribution to SVC that was less than the \$5,000 limit.¹⁶ ActBlue accurately reported Mayer's employment information on its report. There is also information available that Mayer does not appear in a photograph of a Shea-Porter campaign event that the Complainant submitted as proof of coordination.

SVC's payment for the radio ads in support of Shea-Porter satisfies the payment prong, and the communication's nature satisfies the content prong.¹⁷ As to the conduct prong, the Complaint relies on the alleged professional relationships among the various respondents, and the attendance by Mayer and representatives of other respondents at a Shea-Porter campaign event. This information, standing alone, does not satisfy any of the conduct standards set forth in 11 C.F.R. § 109.21(d).¹⁸

Accordingly, the Commission finds that there is no reason to believe that SVC violated 52 U.S.C. § 30116(a) by making an excessive contribution to Shea-Porter and the Committee or violated 52 U.S.C. § 30104(b) by failing to report an excessive contribution.

2. Independent Expenditure Reporting

The Act requires a person (including a political committee) that makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election to file a report describing the expenditures within 24 hours.¹⁹

¹⁶ The Act permits a person to contribute up to \$5,000 per calendar year to other political committees that are not the national or state committees of a political party. 52 U.S.C. § 30116(a)(1)(C).

¹⁷ See 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the radio ads are public communications that clearly identify a federal candidate, Shea-Porter, fewer than 90 days before the candidate's election. See 11 C.F.R. § 109.21(c)(4)(i).

¹⁸ 11 C.F.R. § 109.21(d).

¹⁹ 52 U.S.C. § 30104(g). See also 11 C.F.R. § 104.4(c).

The Act also requires political committees other than authorized committees to disclose independent expenditures on their regularly scheduled reports.²⁰

The Complaint alleges that SVC failed to file a 24-Hour Report disclosing its independent expenditures.²¹ SVC filed its 24-Hour Report on December 2, 2014—after the election and 33 days late—disclosing \$3,000 in independent expenditures.²² In addition, SVC did not report the \$3,000 expenditure on its subsequent disclosure report, the 2014 Post-General Report. However, in light of the small amount at issue, the Commission exercised its prosecutorial discretion and dismisses the allegations that SVC violated 52 U.S.C. § 30104(g) by failing to timely file the 24-Hour Independent Expenditure Report, and violated 52 U.S.C. § 30104(b) by failing to report the independent expenditure on its 2014 Post-General Report.²³ Further, the Commission cautions SVC about its obligations to report independent expenditures.

3. Contributor Employment Reporting

The Act requires political committees to identify each person (other than a political committee) who makes a contribution to the committee, whose contribution or contributions in the aggregate exceed \$200 within the calendar year (or election cycle in the case of an authorized committee), together with the date and amount of any such contribution.²⁴ The identification of

²⁰ 52 U.S.C. § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(3)(vii)(A).

²¹ Compl. at 1.

²² See SVC 24-Hour Independent Expenditure Report (Dec. 2, 2014) and SVC Miscellaneous Report to the Commission (Feb. 9, 2015). SVC asserts that it did not intentionally delay the filing of its 24-Hour Report. SVC Resp. at 3.

²³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

²⁴ See 52 U.S.C. § 30104(b)(3)(A).

the contributor includes reporting the contributor's name, mailing address, occupation, and name of his or employer, if any.²⁵

The intermediary or conduit of an earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission and to the recipient candidate or authorized committee.²⁶ The report by the conduit or intermediary shall contain the name and mailing address of each contributor, and for each earmarked contribution in excess of \$200, the contributor's occupation and name of his or her employer.²⁷

Complainant also alleges that SVC "intentionally changed" its disclosure report by listing Mayer's employment status as "unemployed" even though SVC should have known that the Committee employed her.²⁸ In support, Complainant points to SVC's involvement and familiarity with Shea-Porter's campaign, noting that SVC's co-founder appeared in support of Shea-Porter's 2012 and 2014 campaigns.²⁹ SVC denies that it tried to cover up Mayer's contribution by reporting she was unemployed, and it provides a document it states it received from ActBlue listing Mayer's occupation as "not employed" and her employer as "None."³⁰

While it appears that SVC reported the contributor information that ActBlue provided, that information was incorrect, thus, SVC did not accurately report Mayer's employment information. Nevertheless, the Commission exercises its prosecutorial discretion and dismisses

²⁵ See 52 U.S.C. § 30101(13). See also 11 C.F.R. § 104.8(a).

²⁶ See 11 C.F.R. § 110.6(c).

²⁷ 11 C.F.R. § 110.6(c)(1)(iv)(A).

²⁸ Compl. at 2.

²⁹ *Id.* at 8.

³⁰ SVC Resp. at 2 and attached document. See SVC's 2014 Post-General Election Report at 6.

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the allegation that SVC violated 52 U.S.C. § 30104(b) because SVC's incorrect disclosure relates to one contributor who gave less than the statutory limit.³¹ The Commission cautions SVC about its reporting obligations.³²

4. Debt to Law Firm

The Complaint alleges that Kaufman Legal Group ("Kaufman"), a professional corporation,³³ may have made in-kind contributions to SVC by not requiring SVC to pay its legal fees.³⁴ The Act and Commission regulations prohibit corporations from making contributions to a federal political committee (other than independent-expenditure-only political committees),³⁵ and a political committee is prohibited from knowingly accepting or receiving such contributions.³⁶

The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.³⁷ An extension of credit includes, but is not limited to: (1) any agreement between the creditor and political

³¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

³² See 11 C.F.R. § 110.6(c)(1)(iv)(A) (conduit or intermediary reporting contributor information to recipient committee); 11 C.F.R. § 104.7(b)(4) and 58 Fed. Reg. 57,725, 57,728 (Mar. 3, 1994) (Explanation and Justification) (if a committee receives contributor information after the contribution has been reported, it should either file an amended memo Schedule A with its next scheduled report, listing the contribution for which additional information was received including occupation and employer information, or file on or before the next scheduled report, amendments to the original reports on which the contributions were originally reported).

³³ Kaufman is incorporated in the State of California. See <https://businesssearch.sos.ca.gov/CBS/Detail>.

³⁴ Compl. at 27.

³⁵ See, e.g., Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

³⁶ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

³⁷ See 11 C.F.R. §§ 100.55, 116.3(b).

committee that full payment is not due until after the creditor provides goods or services to the political committee; (2) any agreement between the creditor and political committee that the political committee will have additional time to pay the creditor beyond the previously agreed-to due date; and (3) the failure of the political committee to make full payment to the creditor by a previously agreed-to due date.³⁸ A commercial vendor is any person who provides goods or services to a candidate or political committee, and whose usual and normal business involves the sale, rental, lease, or provision of those goods or services.³⁹

In assessing whether a commercial vendor extended credit in the ordinary course of business, and thus did not make a contribution, the Commission will consider: (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.⁴⁰ A contribution also will result if a creditor fails to make a commercially reasonable attempt to collect the debt.⁴¹

The Act and the Commission regulations specifically except legal and accounting services from the definition of contribution provided that "the person paying for such services is the regular employer of the individual rendering the services and if such services are solely for the

³⁸ See 11 C.F.R. § 116.1(e).

³⁹ See 11 C.F.R. § 116.1(c).

⁴⁰ See 11 C.F.R. § 116.3(c).

⁴¹ See 11 C.F.R. § 100.55.

purpose of ensuring compliance with this Act.”⁴² Kaufman is a law firm specializing in campaign finance law and legal compliance and has been providing compliance services for SVC since at least 2014.

Kaufman has denied forgiving the debt owed by SVC and has continued to provide legal and compliance services to SVC, which could be exempt under 52 U.S.C. § 30101(8)(B)(viii). Further, SVC currently reports a debt to Kaufman for \$17,736, and reports little cash on hand. This low dollar amount and potentially exempt activity does not warrant further use of Commission time and resources. Accordingly, the Commission dismisses the allegation consistent with the Commission’s prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-832 (1985).

5. Other Alleged In-Kind Contributions

The Act defines “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”⁴³ “Anything of value” includes all in-kind contributions and, unless otherwise exempted, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.⁴⁴

a. Democratic Congressional Campaign Committee (“DCCC”)

Complainant, relying on an entry on the DCCC’s disclosure report, alleges that it coordinated with SVC and the Committee on the radio ads described earlier.⁴⁵ The DCCC

⁴² See 52 U.S.C. § 30101(8)(B)(viii)(II); 11 C.F.R. § 100.86.

⁴³ 52 U.S.C. § 30101(8)(A)(i).

⁴⁴ 11 C.F.R. § 100.52(d)(1).

⁴⁵ Compl. at 25, 28.

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violated 52 U.S.C. § 30118(a) by accepting prohibited contributions from NGP VAN, Inc.

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